

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

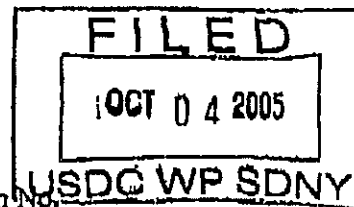
CHARLES KOMAR & SONS, INC.,

Plaintiff,

v.

DOLLAR GENERAL CORPORATION,

Defendant.



Civil Action No.

COMPLAINT

Plaintiff Demands Jury Trial

05 CIV. 8523

Judge McMahon

Plaintiff Charles Komar & Sons, Inc. ("Komar"), by its attorneys Baker and Rannells, PA, alleges on knowledge as to its own acts and otherwise on information and belief as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement in violation of the laws of the United States. Plaintiff seeks an injunction, damages and related relief.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.* and 28 U.S.C. §§ 1331 and 1338.

3. Venue is properly founded in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c) and 1400(a).

THE PARTIES

4. Komar is a corporation duly organized and existing under the laws of the State of New York, and maintains its principal place of business at 16 East 34th Street, New York, New York, 10016. Komar is the owner of certain copyrights at issue in this action.

5. Dollar General Corporation ("Defendant") is a corporation duly organized and

existing under the laws of the State of Tennessee, and maintains its principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Defendant conducts business activities, including those activities complained of herein, within this judicial district.

6. Defendant (a) is doing business in the State of New York; (b) has transacted business within the State of New York and this judicial district; and (c) has committed tortious acts within the State of New York by offering for sale and selling infringing goods within the State of New York and this judicial district.

THE BUSINESS OF PLAINTIFF KOMAR

7. Komar was incorporated and has been doing business throughout the United States since 1957. Komar is a leading designer and manufacturer of women's sleepwear and lingerie and its products are offered for sale and sold throughout the United States in major retail department stores, specialty stores and discount stores under its famous trademarks including the ARIA® and EARTH ANGELS® trademarks.

8. Komar's fabric and embroidery patterns were created exclusively for Komar's products and such fabric and embroidery patterns constitute original works of authorship, protectable pursuant to the laws of the United States and pursuant to international law including various copyright conventions and treaties the United States is a party to.

9. Komar is the owner of numerous original works of authorship for its fabric and embroidery patterns including the following:

a. *Group No. 269* which is the subject of Certificate of Copyright Registration No. VA 1-311-671, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit A.

b. *Group No. 087-5019* which is the subject of Certificate of

Copyright Registration No. VA 1-311-668, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit B.

c. *Group No. 087-5020* which is the subject of Certificate of Copyright Registration No. VA 1-311-678, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit C.

d. *Group No. 418* which is the subject of Certificate of Copyright Registration No. VA 1-311-677, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit D.

e. *Group No. 832-A982032* which is the subject of Certificate of Copyright Registration No. VA 1-311-673, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit E.

f. *Group No. 832-A182832* which is the subject of Certificate of Copyright Registration No. VA 1-311-674, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit F.

g. *Group No. 1001-A801001* which is the subject of Certificate of Copyright Registration No. VA 1-311-676, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit G.

h. *Group No. 1001-A871001A* which is the subject of Certificate of Copyright Registration No. VA 1-311-669, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit H.

i. *Group No. 1004* which is the subject of Certificate of Copyright Registration No. VA 1-311-679, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit I.

j. *Group No. SJC 50034* which is the subject of Certificate of Copyright Registration No. VA 1-311-672, a copy of which is annexed hereto together with the deposit materials included therewith as Exhibit J (hereinafter, the above-referenced Certificates of Copyright Registration are collectively referred to as the “Komar Copyrights”)

10. As evidenced by the Certificates of Copyright Registration referenced above and attached hereto, the Komar Copyrights are in full force and effect and Komar has duly complied with all requirements of the Copyright Act pertaining to each and every one of the original works of authorship for its fabric and embroidery patterns.

DEFENDANT’S WRONGFUL ACTIVITIES

11. After Komar’s original works of authorship for its fabric and embroidery patterns, which are the subject of the Komar Copyrights, were introduced into the United States market, Defendant infringed upon the Komar Copyrights by manufacturing, distributing, importing, offering for sale and/or selling in interstate commerce and in this judicial district various articles of women’s sleepwear and other products that are virtual replicas of original Komar products (hereinafter the “Offending Products”). The Offending Products contain artwork that has been copied directly from and is substantially similar in appearance to the Komar Copyrights. Photographs of the Offending Products are annexed hereto as Exhibit K.

12. Defendant’s infringement of the copyrighted fabric and embroidery patterns was, and continues to be, with the knowledge that the artwork copied from Komar’s products is copyrighted and Defendant, in doing or authorizing such acts, has infringed the rights of Komar in the Komar Copyrights pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.* and such actions on the part of Defendant were deliberate and willful.

13. Defendant's activities, as noted above, are unauthorized by Komar and Defendant's activities unlawfully trade upon the creative efforts of Komar. Defendant has, consequently, unjustly enriched itself at the expense and to the damage and injury of Komar.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT)

14. Komar repeats and realleges the allegations set forth in paragraphs 1 through 13 above as if fully set forth herein.

15. Komar has duly complied with all requirements of the Copyright Act with respect to the protection of the original works of authorship that are the subject of the Komar Copyrights.

16. Defendant has, without any license, consent or authority from Komar, manufactured, had manufactured, distributed, imported, offered for sale and/or sold the Offending Products containing artwork that was copied from and is substantially similar in overall appearance to the original works of authorship that are the subject of the Komar Copyrights.

17. Defendants has thereby willfully infringed and, continues to infringe Komar's copyrights in the original works of authorship that are the subject of the Komar Copyrights.

18. Such conduct on the part of Defendant has injured Komar in an amount to be determined at trial and has caused and will continue to cause irreparable injury to Komar, for which Komar has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands that a judgment be entered granting the following relief:

1. Preliminarily and permanently enjoining and restraining Defendant, its subsidiaries, affiliates, divisions, officers, directors, principals, servants, employees, successors and assigns, and all those in active concert or participation with them from manufacturing, importing, exporting, distributing, circulating, selling, offering for sale, advertising, promoting or displaying the Offending Products or any other product containing artwork or other designs that are substantially similar to the original works of authorship that are the subject of the Komar Copyrights.
2. That Defendant be required to remove all Offending Products from sale and deliver such goods to Komar for disposition/destruction.
3. That Defendant be required to recall all Offending Products shipped to any customer, domestic or foreign, and deliver the recalled goods to Komar for disposition/destruction.
4. That Defendant be required to file with this Court and serve on Komar thirty (30) days after the date of the injunction a report in writing and under oath setting forth in detail the manner or form in which Defendant has complied fully with the injunction.
5. Awarding Komar all damages sustained by Komar as the result of Defendant's wrongful acts.
6. Requiring Defendant to account and pay over to Komar all profits realized by their wrongful acts.

7. Awarding Komar its costs and reasonable attorneys' and investigatory fees and expenses, together with prejudgment interest.
8. Awarding Komar such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 4, 2005

BAKER AND RANNELLS, PA

By: /Neil B. Friedman/
Stephen L. Baker (SB-1859)
Neil B. Friedman (NF-0591)

Attorneys for Plaintiff
Charles Komar & Sons, Inc.
C/O Reppert Kelly, LLC
1350 Broadway, 10th Floor
New York, NY 10018
(212) 481-7007

and

626 North Thompson Street
Raritan, New Jersey 08869